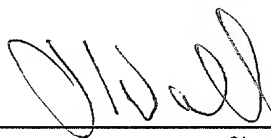


PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)					
<p>I hereby certify that this correspondence is being transmitted electronically to the U.S. Patent and Trademark Office</p> <p>on <u>July 24, 2008</u></p> <p>Signature <u><i>Candi L. Riggs</i></u></p> <p>Typed or printed name <u>Candi L. Riggs</u></p>		9400-7					
		<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 50%; padding: 2px;">Application Number</td><td style="width: 50%; padding: 2px;">Filed</td></tr><tr><td style="text-align: center; padding: 2px;">10/606,677</td><td style="text-align: center; padding: 2px;">6/26/2003</td></tr></table>		Application Number	Filed	10/606,677	6/26/2003
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		10/606,677	6/26/2003				
<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td colspan="2" style="padding: 2px;">First Named Inventor</td></tr><tr><td colspan="2" style="text-align: center; padding: 2px;">Glenn Mahony</td></tr></table>		First Named Inventor		Glenn Mahony			
First Named Inventor							
Glenn Mahony							
<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 50%; padding: 2px;">Art Unit</td><td style="width: 50%; padding: 2px;">Examiner</td></tr><tr><td style="text-align: center; padding: 2px;">2613</td><td style="text-align: center; padding: 2px;">Li, Shi K.</td></tr></table>		Art Unit	Examiner	2613	Li, Shi K.		
Art Unit	Examiner						
2613	Li, Shi K.						
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 20px;"><div style="width: 45%;"><p>I am the</p><p><input type="checkbox"/> applicant/inventor.</p><p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p><p><input checked="" type="checkbox"/> attorney or agent of record. <u>50,743</u> Registration number _____</p><p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p></div><div style="width: 50%; text-align: center;"><div style="margin-bottom: 10px;"> _____ Signature</div><div style="margin-bottom: 10px;"><u>Timothy J. Wall</u> _____ Typed or printed name</div><div style="margin-bottom: 10px;"><u>919/854-1400</u> _____ Telephone number</div><div><u>July 24, 2008</u> _____ Date</div></div></div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"><p><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</p></div>							

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Glenn Mahony et al.

Group Art Unit: 2613

Serial No.: 10/606,677

Examiner: Li, Shi K

Filed: June 26, 2003

Confirmation No.: 5379

For: HYBRID FIBER TO THE HOME/FIBER TO THE CURB TELECOMMUNICATIONS
APPARATUS AND METHODS

Date: July 24, 2008

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**REASONS IN SUPPORT OF PRE-APPEAL
BRIEF CONFERENCE REQUEST**

Sir:

This document supports the Pre-Appeal Brief Request for Review that is filed concurrently herewith along with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG Notice of July 12, 2005.

Applicants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the rejections of Claims 1, 7-8, 11, 16, 17, and 19-20, which were finally rejected in the Final Office Action mailed April 25, 2008 ("Final Action").

35 U.S.C. § 112 Rejections Are Improper

The Final Action rejects Claims 7, 17 and 19-20 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Final Action, page 2. The Final Action cites portions Claim 7 and Claim 1, from which Claim 7 depends, as reciting limitations not taught in the specification. Final Action, page 2. The Final Action specifically states that nowhere does the instant specification teach that an ONU is coupled to both an OLT and a HDT. Final Action, page 2. Applicants submit that the Final Action appears to incorrectly interpret the claim language by apparently failing to consider the recited terms "respectively" in the claims. In this regard, Claims 1, 7, and 17 all appear to consistently recite that the ONU is connected to the power source. Accordingly, Applicants respectfully request that the rejections under 35 U.S.C. § 112, first paragraph, be withdrawn.

Claims 1 and 17 Are Patentable Over the Cited References

Claims 1 and 17 are rejected under 35 U.S.C. §103(a) in view of U.S. Patent No. 6,577,414 to Feldman et al. ("Feldman"), and in further view of various combinations of U.S. Patent No. 7,349,394 to Sala et al. ("Sala"), U.S. Patent No. 6,236,789 to Fitz ("Fitz"), U.S. Patent No. 6,427,042 to Dyke et al. ("Dyke"), U.S. Patent No. 5,606,555 to Singer ("Singer"), and "Service-Affecting Optoelectronic Failures in FITL Systems: Downtime, Repair Actions, and Maintenance Expenses" by R. Iglesia ("Iglesia"). Specifically, Claim 1 stands rejected as unpatentable over Feldman, Sala, Fitz, Singer and Dyke and Claim 17 stands rejected as unpatentable over Feldman, Sala, Dyke, Fitz, Singer and Iglesia. Applicants respectfully submit that the claims are patentable over the cited references.

For example, independent Claim 1 recites, in part:

wherein the optical splitter directly subtends the ONU,
wherein the optical splitter and the ONU are co-located,
wherein the ONU is powered by a power source at a location remote
from the ONU,
***wherein a composite copper/fiber cable couples an optical line
terminal (OLT) and the power source to the optical splitter and the ONU,
respectively,***
wherein the optical splitter interfaces a first optical fiber to a plurality
of second optical fibers,
wherein one of the second optical fibers directly connects the optical
splitter to the ONU,
wherein at least one of the second optical fibers directly serves a
subscriber premises of the plurality of subscriber premises,
wherein at least one of the second optical fibers serves a second optical
splitter,
wherein the optical splitter and the ONU are positioned at a pole,
wherein at least one of the second optical fibers comprises an aerial
fiber optic drop extending from the pole to an ONT at a subscriber premises,
and
wherein the ONU is coupled to an optical line terminal (OLT) through
a plurality of optical splitters. (*Emphasis added.*)

Applicants respectfully submit that Feldman, Sala, Fitz, Singer and Dyke, alone or in combination, do not disclose or suggest "wherein a composite copper/fiber cable couples an optical line terminal (OLT) and the power source to the optical splitter and the ONU, respectively," as recited in Claim 1, in combination with other recitations therein.

In response to Applicants' arguments, the Final Action states that "[t]he terms OLT and HDT are equivalent." Final Action, page 7. As an initial matter, Applicants note that the terms are specifically and distinctly recited in Claim 1 and thus cannot be rendered equivalent by some extrinsic source or erroneous conclusion. Moreover, the Final Action contradicts itself. For example, the distinction between an OLT and a HDT was the basis for the confused interpretation upon which the Final Action based the rejections under 35 U.S.C. §112, first paragraph, as discussed above.

Additionally, Applicants respectfully submit that Claim 1 is directed to a system that includes a specific combination of recitations that is not disclosed or suggested in the cited references. Accordingly, Applicants respectfully submit that Claim 1 is patentable and request the allowance thereof for at least these reasons.

Additionally, Claim 17 recites, in part:

wherein the optical splitter directly subtends the ONU,
wherein the optical splitter and the ONU are co-located,
wherein the optical splitter and the ONU are positioned at a pedestal or pole,

wherein the ONU is powered by a power source a location remote from the ONU,

wherein a composite copper/fiber cable couples a host digital terminal (HDT) and the power source to the optical splitter and the ONU, respectively,

wherein the ONU is coupled to an optical line terminal (OLT) through a plurality of optical splitters,

wherein the OLT is located at one of a central office (CO) or a remote terminal (RT),

wherein the optical splitter interfaces a first optical fiber to a plurality of second optical fibers,

wherein one of the second optical fibers directly connects the optical splitter to the ONU,

wherein at least one of the second optical fibers directly serves a subscriber premises of the plurality of subscriber premises,

wherein at least one of the second optical fibers comprises an aerial fiber optic drop extending from the pole to an ONT at a subscriber premises,

wherein the optical splitter and the ONU are positioned at a pole on a first side of a street,

wherein at least one of the second optical fibers and at least one conductor connected to the ONU serve subscriber premises on the first side of the street,

wherein an aerial composite cable carries at least one of the second optical fibers and at least one conductor connected to the ONU to a second pole on the first side of the street, and

wherein the system further comprises:

a second optical splitter that is positioned at the second pole and that interfaces the at least one of the second optical fibers to aerial fiber optic drops to ONTs located at respective subscriber premises on the first side of the street and a second side of the street; and

a plurality of aerial conductor drops extending from the second pole to the subscriber premises on the first and second sides of the street. (*Emphasis added.*)

Applicants respectfully submit that Feldman, Sala, Dyke, Fitz, Singer and Iglesia, alone or in combination, do not disclose or suggest "wherein a composite copper/fiber cable couples a host digital terminal (HDT) and the power source to the optical splitter and the ONU, respectively," as recited in Claim 17, in combination with other recitations therein. The Final Action states that:

Feldman et al. teaches in col. 7, lines 1-2 that the OEC is powered by the network. It is understood that it means the power source is at a remote location and power is fed to the OEC via a distribution network. Fitz teaches in FIG. 2 a composite copper/fiber cable for distributing power and optical signal from a central office (CO) or headend to ONUs.

Final Action, pages 3-4. Applicants respectfully submit that the generalized discussion of distributed power that is provided the Final Action does not provide sufficient support for a rejection of the specific recitations of Claim 17.

Additionally, Feldman, Sala, Dyke, Fitz, Singer and Iglesia, alone or in combination, do not disclose or suggest "a second optical splitter that is positioned at the second pole and that interfaces the at least one of the second optical fibers to aerial fiber optic drops to ONTs located at respective subscriber premises on the first side of the street and a second side of the street," as recited in Claim 17, in combination with other recitations therein. The Final Action states that:

Dyke et al. teaches in FIG. 1 street distribution comprising poles and drop fibers. One of ordinary skill in the art would have been motivated to combine the teaching of Dyke et al. with the modified PON of Feldman et al., Sala et al., Fitz and Singer.

Final Action, page 5. Applicants respectfully submit that the generalized discussion of a passive optical network architecture that is provided the Final Action does not provide sufficient support for a rejection of the specific recitations of Claim 17. Additionally, Applicants respectfully submit that Claim 17 is directed to a system that includes a specific

combination of recitations that is not disclosed or suggested in the cited references. Accordingly, Applicants respectfully submit that Claim 17 is patentable and request the allowance thereof for at least these reasons.

Regarding claims 1 and 17, Applicants respectfully submit that given the scope of the claim recitations, an obviousness rejection using the number of references that would have to be combined to read on the claims would necessarily be based on hindsight analysis and therefore be improper. Accordingly, Applicants respectfully request the allowance of Claims 1 and 17.

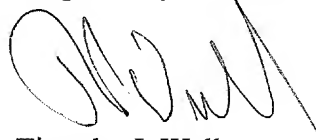
The Dependent Claims are Patentable

Applicants submit that dependent Claims 7, 8, 11, 16, 19 and 20 are patentable at least by virtue of the patentability of the respective ones of independent Claims 1 and 17 from which they depend.

CONCLUSION

As all of the claims are now in condition for allowance, Applicants respectfully request allowance of the claims and passing of the application to issue in due course. Applicants urge the Examiner to contact Applicants' undersigned representative at (919) 854-1400 to resolve any remaining formal issues.

Respectfully submitted,

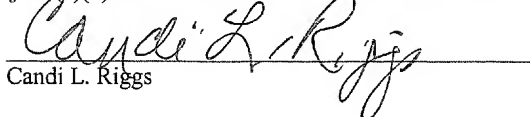


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CERTIFICATION OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on July 24, 2008.



Candi L. Riggs